



OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

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ATTORNEY GENERAL

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ARIZONA ATTORNEY GENERAL

Honorable Emmett McLoughlin  
Arizona State Representative  
State Capitol  
Phoenix, Arizona 85007

Re: 77-12 (R77-28)

Dear Representative McLoughlin:

You have asked whether a local governmental unit may demand that private property be dedicated to public use as a condition of receiving a building permit.

The only Arizona case that we have found which is in point is Transamerica Title Insurance Company v. City of Tucson, 23 Ariz. App. 385, 533 P.2d 693 (1975). In that case plaintiff Transamerica challenged the right of the City to require the conveyance of private property for street widening as a condition to granting the requested change of zoning. The court, in its opinion, accepted the proposition that a dedication may be exacted where the change in zoning gives rise to a provable increase in the amount of traffic which in turn necessitates the street improvements. However, on the facts there presented, the Court held that City had not met its burden of proving that the widening of the streets was necessitated by the rezoning.

The principles set forth in Transamerica should be generally applicable to cases involving building permits. Generally, however, the administrative act of granting building permits is less of a discretionary function than the quasi legislative function of zoning. Thus, it may be that courts will be less ready to approve the dedication of property as a condition of granting building permits. At this point there is no case law, and I believe that it would be very difficult to predict the outlines of the ultimate resolution by the courts.

Please let me know if we can be of further assistance.

Sincerely,

Bruce E. Babbitt  
Attorney General

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